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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Alsup, Judge

WAYMO LLC,)	
)	
Plaintiff,)	
)	
VS.)	NO. C 17-00939 WHA (JSC)
)	
UBER TECHNOLOGIES, INC.; OTTO)	
TRUCKING LLC; and OTTOMOTTO)	
LLC,)	
)	
Defendants.)	
)	

San Francisco, California
Wednesday, December 13, 2017

**TRANSCRIPT OF THE OFFICIAL ELECTRONIC SOUND RECORDING
OF PROCEEDINGS**

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1 Wednesday - December 13, 2017

2:02 p.m.

2 P R O C E E D I N G S

3 ---000---

4 **THE CLERK:** Civil Action C. 17-00939, Waymo versus
5 Uber.

6 **THE COURT:** Good afternoon. It's Judge Corley.
7 Instead of having you make your appearances, when you speak, if
8 you could just state your name, so -- because we are recording
9 this, in case you want a transcript. If we could begin,
10 Mr. Cooper, are you on the call?

11 **SPECIAL MASTER COOPER:** Yes, I am.

12 **THE COURT:** Mr. Cooper, the letters that I received
13 last night -- they don't seem to match. So maybe if you could
14 tell me -- identify the disputes that you believe the parties
15 are going to be bringing to my attention.

16 **SPECIAL MASTER COOPER:** Well, I believe that there is
17 an issue about production of documents and production of
18 privilege logs. And I believe that is the thing that -- the
19 two issues that I have had with regard to this hearing. So
20 production of privilege logs, what those would be; and the
21 production of documents, and how extensive that will be.

22 **THE COURT:** Okay. All right. So why don't we begin,
23 then, with Waymo's letter? And I'm going to go to Number 1 on
24 page 3 of the letter. And because Uber's written response
25 didn't really address that, I'll give Uber an opportunity to

1 address it now.

2 **MR. GONZÁLEZ:** Your Honor, this is Arturo González.

3 Yeah. My apologies for these documents not matching.

4 Frankly, you know, considering how fast everybody's moving, I
5 think we miscommunicated about what issues Waymo is going to be
6 raising with the Court, and so half of our letter is arguably
7 moot.

8 But with respect to this issue, I wrote to -- I think this
9 is a moot issue. I wrote to Mr. Perlson yesterday afternoon,
10 and told him that the more expansive log that they were asking
11 for was being prepared, and that we would try to get it to him
12 by 7:00 o'clock, understanding that they had to file their
13 brief by 10:00.

14 We, in fact, served them with our privilege log at 7:30.
15 So I was frankly a little surprised to see this issue in here.
16 They've raised some questions about the log, and I responded to
17 those questions. I think I'll leave it at that for now.

18 **THE COURT:** All right. So your log does include
19 communications with -- MoFo's communications with Uber or other
20 law firms regarding the Jacobs documents?

21 **MR. GONZÁLEZ:** That's correct, Your Honor.

22 The only exception is that the parties agreed that it
23 didn't have to log the same communications that were already
24 logged by WilmerHale.

25 **THE COURT:** Okay.

1 **MR. GONZÁLEZ:** In other words, if Wilmer logs --

2 **THE COURT:** Yeah. No. That makes sense.

3 **MR. GONZÁLEZ:** -- MoFo. Yeah.

4 **THE COURT:** Okay. All right.

5 **MS. BAILY:** This is Melissa Baily, from the Waymo
6 side. We did get a log from Morrison & Foerster last night.
7 It was supposed to be provided last Sunday, so that's why we
8 had these pending. And I do want to raise two issues with the
9 log.

10 The first is that there's this odd title on the log that
11 seems to be very restrictive. It says it's a log of
12 communications that substantively refer to the resignation
13 e-mail, the demand letter, and the Settlement Agreement. And I
14 don't know what that means.

15 I asked Mr. González what it means. He did answer other
16 of my questions, but not that one.

17 And the problem here, without getting into too much detail
18 about the back-and-forth, is that it's been pretty opaque about
19 what the defendants are providing, and when. And there's, you
20 know, carefully chosen words. And there's representations that
21 change.

22 And we really need a log that broadly describes
23 communications to the latest of the Jacobs applications,
24 without restriction, you know, because if Morrison & Foerster
25 is drawing the first line --

1 **THE COURT:** Okay. Mr. González, what line was drawn
2 in terms of what you decided to put on the more expansive log?

3 **MR. GONZÁLEZ:** Thank you, Your Honor. I'd be happy
4 to address that.

5 So the -- we had given them a log earlier about the
6 communications with our firm that attached the letter, itself.

7 Then they wanted the communications that made reference to
8 the substance of the letter. And that's what we gave them.

9 The only thing that we excluded is if there might have
10 been an e-mail about setting up a phone call, or something
11 random like that --

12 **THE COURT:** Okay.

13 **MR. GONZÁLEZ:** -- that didn't make any reference to
14 the substance of the documents.

15 **THE COURT:** All right. So you sort of --
16 "substantive" was in contrast to "procedural," in a sense?

17 **MR. GONZÁLEZ:** Precisely.

18 **THE COURT:** Okay.

19 **MS. BAILY:** So, Your Honor, just two more issues. I
20 realize that time is of the essence, but we do now understand,
21 from questions that I raised about this log with Mr. González,
22 that things related to setting up phone calls and oral
23 communications about the Jacobs allegations were not included
24 in this log. We feel very strongly that they need to be.

25 If somebody remembers talking on the phone or going over

1 to Uber and talking about the Jacobs allegations while the
2 documents were being withheld by Waymo, that is exactly what
3 Judge Alsup said we are entitled to discovery into.

4 How much in the weeds were the MoFo lawyers and the Boies
5 lawyers in these allegations when they were withholding the
6 documents from us?

7 And so we definitely think that communications about phone
8 calls and oral communications that are not corresponding to
9 written documents need to be included.

10 **THE COURT:** All right. Mr. González.

11 **MS. BAILY:** There are no pages. Did not include
12 them.

13 **MR. GONZÁLEZ:** So, Your Honor, we never even
14 discussed this. All along we've been talking about a log, you
15 know, like your standard privilege logs.

16 Wilmer gave them one.

17 This is now my third one. I gave them two earlier logs,
18 and this is the longer one.

19 For the first time today, they're saying they learned
20 about any oral conversations. I think, for context -- and this
21 will be brief -- they have already gotten all of the written
22 communications that show clearly -- to the extent they want to
23 make a point of this fact, it is now undisputed; and I told
24 Judge Alsup this -- that MoFo, and I, personally, received what
25 we call "the resignation e-mail." I got that, myself; and now

1 they know that other people here did, as well.

2 They also know that some of my partners got the long
3 document; the letter that was written by Mr. Jacobs' lawyer.
4 They know that now. So we have that information. And they
5 know that.

6 So what additional point did they want to make by me
7 logging the fact that there may have been a phone call at some
8 point about the same stuff?

9 **THE COURT:** Well, I don't -- I don't --

10 **MS. BAILY:** I can respond to that.

11 **THE COURT:** Well, I don't --

12 Wait, wait.

13 We're not talking about a phone call. We're talking about
14 e-mails, I guess, you said that you did not log, because
15 they're just setting up meetings, or things like that.
16 Correct?

17 **MR. GONZÁLEZ:** Yes. Procedural. Yes, Your Honor.

18 **THE COURT:** So why would they be logged, at all?

19 In other words, why would they be privileged? Why
20 wouldn't they just be produced? That's, I guess, for you,
21 Mr. González. Why wouldn't you just produce them?

22 **MR. GONZÁLEZ:** Well, Your Honor, at some point
23 there's going to -- the one issue I haven't looked at is
24 work-product issues. I'd have to go back and look at them.

25 Frankly, what I was told is just giving them information,

1 which is what I thought they wanted, on the substance of the --
2 of the document --

3 **THE COURT:** No, no, no. I understand. And I'll
4 accept that it didn't come up, or not.

5 So I think, with respect, that -- and I will rule it's not
6 a waiver of work product. Right? We're just trying to
7 expeditiously get this particular issue resolved.

8 But if there are e-mails that you haven't logged because
9 you say they're procedural -- not substantive -- just then
10 produce them. And there will be no waiver of work product, to
11 the extent there's work product there. I don't know.

12 **MR. GONZÁLEZ:** Your Honor, I'll go back. I'll go --
13 I'll go back and look at that. And I think that what you just
14 said is accurate, but what I wanted to be clear about is when I
15 say "not substantive," I mean they don't refer to the substance
16 of this document.

17 **THE COURT:** Well, I don't -- I think you should go
18 back and re-look at your log. And either --

19 **MR. GONZÁLEZ:** Understood, Your Honor.

20 **THE COURT:** And either produce it if it's just privy
21 to, or log it if you believe it's --

22 **MR. GONZÁLEZ:** Will do, Your Honor.

23 **THE COURT:** Okay.

24 **MS. BAILY:** Your Honor, I also -- I mean, we do feel
25 very strongly that -- that that -- we understand your ruling on

1 that issue with respect to written documentation of oral
2 communications, but this is not a privilege log like the normal
3 privilege log that goes with a document production. This was
4 intended to be a log that gave Waymo complete insight into how
5 much was going on with respect to the Jacobs allegations at
6 Morrison Foerster while they were withholding the documents
7 from Waymo.

8 And so we also believe that apparently there were phone
9 calls and meetings about the Jacobs allegations, and that those
10 should be logged if they're -- if they happened.

11 **THE COURT:** Well, part of it will be these e-mails
12 which you will get that are just setting up meetings. And so
13 then you'll have -- you'll know there was the meeting when you
14 get those e-mails.

15 **MS. BAILY:** Understood. Understood. But you know --
16 and I understand that recollections might not be perfect, but
17 you know, if there are two meetings that folks were called, you
18 know, and that there's no documentation about at Uber about
19 these allegations, you know, it's not that burdensome to --

20 **THE COURT:** Well, I don't know. How are they
21 supposed to know? That's what -- I mean, how are they supposed
22 to know, if there's no document or if there's no e-mail?

23 **MS. BAILY:** Well, if they have a recollection, that's
24 all we're asking.

25 **THE COURT:** Well, isn't that what you're going to do?

1 Don't you have a number of depositions scheduled?

2 **MS. BAILY:** Well, that's a separate -- separate issue
3 because, you know, Morrison and -- the -- we've requested
4 depositions of outside counsel.

5 They've resisted.

6 We've proposed an interim solution, whereby they answer
7 some questions that we had in declaration form.

8 We were told we were going to get an answer with respect
9 to whether those questions would be answered on Monday.

10 We still have not yet gotten an answer about whether
11 they're willing to answer those questions.

12 **THE COURT:** Okay.

13 **MS. BAILY:** Declarations.

14 **THE COURT:** I shouldn't have brought that up. Let me
15 ask you a different question. Did Judge Alsup order that they
16 log any phone calls?

17 **MS. BAILY:** There's no explicit order about a log.

18 **THE COURT:** Okay.

19 **MS. BAILY:** He explicitly said that we're entitled to
20 know what was going on --

21 **THE COURT:** Okay.

22 **MS. BAILY:** -- with the Jacobs allegations.

23 **THE COURT:** Okay. I appreciate that. Okay.

24 I'm not going to order the log to include any oral
25 communications. I am ordering that they turn over all those

1 e-mails in the center that may be setting up those meetings and
2 the like; that they should produce those. I don't know why
3 they would be privileged. If the work product -- is going to
4 be no waiver of work product. And anything else, then,
5 otherwise has to be logged. So there shouldn't be anything
6 that's withheld. It should either be produced or logged; but
7 they do not have to log oral communications.

8 **MS. BAILY:** Thank you, Your Honor.

9 **MR. GONZÁLEZ:** Your Honor, Your Honor, Your Honor,
10 that's understood, but I want to make one thing clear for
11 Your Honor, just to make sure that -- I don't want there to be
12 a misunderstanding. And Judge Alsup knows this part. My
13 partners were retained to do an analysis of compliance issues.

14 **THE COURT:** Right. I read the transcript.

15 **MR. GONZÁLEZ:** They were --

16 **THE COURT:** Yeah.

17 **MR. GONZÁLEZ:** I'm sorry?

18 **THE COURT:** I read the transcript of the hearing.

19 **MR. GONZÁLEZ:** Okay. So I just want to separate that
20 out.

21 In other words, if there were meetings to discuss these
22 documents that we're talking about -- the Jacobs matter, you
23 know, and documents about that -- fine. I'll log that.

24 But I don't intend to log --

25 We've been doing work for ten months now or nine months --

1 whatever it is -- on compliance issue. And I just want to make
2 that clear.

3 **THE COURT:** Well. He -- Jacobs didn't resign until
4 May. Right? When was the resignation e-mail?

5 **MR. GONZÁLEZ:** It's -- I don't remember the date,
6 Your Honor.

7 **MR. PERLSON:** Perlson.
8 I think April 14th.

9 **THE COURT:** April. All right. So you don't have to
10 log anything before then, because it couldn't have been
11 responding to that. Right?

12 **MR. GONZÁLEZ:** No. I understand.

13 I just -- my point is on the other end of April 14th, what
14 Your Honor may not know or recall is we weren't initially going
15 to work with Wilmer on the Jacobs matter. And almost
16 immediately were told that we were not going to; that we were
17 going to do the more general compliance work, was why.

18 And so what I'm saying to Your Honor is there have
19 obviously been gobs of meetings on the general compliance
20 issues since then; and that the meetings that I think the Court
21 is referring to, and that I will log, are meetings that pertain
22 to the Jacobs matter.

23 **THE COURT:** Correct.

24 **MR. GONZÁLEZ:** Yeah. Okay.

25 **THE COURT:** Not the compliance matter, but the Jacobs

1 matter.

2 **MR. GONZÁLEZ:** I just wanted you to understand that,
3 because --

4 **THE COURT:** Okay.

5 **MR. GONZÁLEZ:** -- I didn't want anybody to think that
6 I misread you. That's all.

7 **THE COURT:** No, no, no. It's all -- it's the Jacobs
8 matter.

9 Correct, Ms. Bailly?

10 **MS. BAILY:** Well, allegations raised by Jacobs. To
11 be clear, it's not just, you know, Jacobs documents or, you
12 know -- it's the allegations that were raised by him.

13 **MR. PERLSON:** Right. And this is David Perlson.

14 I'm sorry to interject, but I have refer -- saying
15 anything different, but it would be that the Jacobs allegations
16 that --

17 And so, you know, if, in fact, these multiple lawyers are
18 doing something about compliance generally, that's not clear.

19 But if they're doing -- if there are MoFo lawyers who
20 aren't on the -- quote, unquote -- "trial team" who are working
21 on the compliance matter, and as part of that, are discussing
22 the Jacobs allegations, that would be included.

23 **THE COURT:** That's the -- I believe that's what we're
24 talking about: The Jacobs matter.

25 Is that correct, Mr. González?

1 **MR. GONZÁLEZ:** Yes, Your Honor, that's correct.

2 **THE COURT:** Okay. We're all in agreement then.

3 **MS. BAILY:** So, Your Honor, there's one last issue,
4 which is that Boies also should be providing a log.

5 Now, we were told by Boies that they didn't have anything
6 to log, but WilmerHale actually included in their log
7 communications with Boies.

8 And so, again, we're very concerned that Boies is taking a
9 very restrictive view of what should or shouldn't be logged
10 with respect to communications related to the Jacobs
11 allegations. And so we need to get a log from Boies about any
12 such communications related to the Jacobs allegations.
13 WilmerHale seems to think there were some.

14 **THE COURT:** Well, to the extent, I guess, that
15 they're not already on the WilmerHale log, or the --

16 **MS. BAILY:** I -- I --

17 **THE COURT:** -- MoFo log, I agree with that. It
18 doesn't have to be re-logged.

19 **MS. BAILY:** The problem is that Wilmer -- and this is
20 the problem we've been saying. So WilmerHale had a directive
21 to log communications related to the Jacobs allegations. They
22 logged communications with Boies.

23 Boies has said that they don't know why those
24 communications were logged. They wouldn't have put them on a
25 log of communications related to the Jacobs allegations.

1 Well, if that's true, then we have a problem here with
2 potentially Boies taking too narrow a view of what would be
3 relevant, and not logging other communications that might be
4 relevant.

5 **THE COURT:** Or Wilmer taking too broad a view.

6 Let me hear from Mr. González, unless there's somebody
7 from Boies on the line.

8 **MR. GONZÁLEZ:** That's exactly what happened,
9 Your Honor --

10 **MS. DUNN:** Wait, wait, wait. This is Karen. I'm
11 here.

12 **MR. GONZÁLEZ:** Oh, Karen's here. Great.

13 **THE COURT:** Oh, Ms. Dunn. All right. Go ahead,
14 Ms. Dunn.

15 **MS. DUNN:** Yeah, sorry. It's Ms. Dunn.

16 So I think that Your Honor is correct on Wilmer taking too
17 broad a view. And I think part of this would be clarified if
18 you could see Wilmer's e-mail clarifying their logs.

19 So Wilmer's clarifying e-mail says that they learned that
20 their log might have created some confusion, and they're
21 writing to provide clarification. They say, *Out of an*
22 *abundance of caution, the log includes an entry for the first*
23 *time I've seen -- ever had communications with BSF in this*
24 *matter. That communication related to an issue that arose from*
25 *our internal investigation of practices by Uber's Security*

1 Group following Mr. Jacobs' 5/5/17 letter. As noted in the
2 bracketed language on the privilege log, Wilmer did not discuss
3 the Jacobs e-mails, letters, or the contents therein with
4 anyone at BSF until Thanksgiving Day. We similarly did not
5 ever send to BSF the 4/14/17 e-mail, the 4/1/17 letter, or the
6 5/5/17 letter. We hope this clarifies any confusion our
7 submission may have caused.

8 **THE COURT:** Okay. All right.

9 **MS. DUNN:** And subsequent to that, just so you have
10 all of the information, this made me --

11 The Wilmer clarification, I don't think, was appended to
12 the Waymo submission; but I think my e-mail was, where I said,
13 you know, we were generally aware that Wilmer was doing an
14 internal investigation, but the substance of any allegations
15 being investigated was not shared with BSF, nor were any
16 documents. I want to be very clear about this.

17 **THE COURT:** Okay. So --

18 **MS. DUNN:** I do think that --

19 **THE COURT:** Okay. So just so it's -- so -- so Boies,
20 then, is not withholding any documents that fall within the
21 category that we were just discussing with Mr. González?

22 **MS. DUNN:** Correct. If the category is the
23 allegations in the Jacobs documents, no BSF attorney was aware
24 of those allegations until Thanksgiving Day.

25 Wilmer did communicate with us about an issue that arose

1 in their investigation in the Securities Group, but that issue
2 was not related to the subject matter in the letters, as Wilmer
3 has, themselves, said.

4 **THE COURT:** Okay. Ms. Baily, anything further?

5 **MS. BAILY:** I -- you know, as long as --

6 It's hard, because the representations keep changing. And
7 Wilmer had originally said that communication actually was
8 relating to the Jacobs allegations. So --

9 **THE COURT:** Well, are you referring to their --

10 **MS. BAILY:** -- all I can do --

11 **THE COURT:** Ms. Baily, are you referring to their
12 privilege log? Because I went and I looked at it this morning.
13 And it -- that arose from an internal investigation of
14 practices following Jacobs' letter. And then they said the
15 correspondence does not specifically reference. So I actually
16 don't find that to be inconsistent.

17 **MS. BAILY:** Right. Right. So -- so -- and I
18 apologize. And we actually -- almost immediately before this
19 hearing. So, you know, obviously, we understand you didn't get
20 it. We realized we hadn't submitted the first log from
21 WilmerHale that described it differently.

22 And then after Ms. Dunn complained, they changed this
23 description. So it's been an evolving -- an evolving
24 description of what these communications actually say.

25 **THE COURT:** Okay. Well, anyway, that's resolved now,

1 as far as I'm concerned.

2 Okay. Let's move on, then, to Number 2, which is the
3 production of documents.

4 **MR. SCHMIDT:** Your Honor, this is Patrick Schmidt,
5 from Waymo. I'm going to be speaking to this, if you'd like to
6 hear from me.

7 **THE COURT:** Well, is there anything that still hasn't
8 been produced?

9 **MR. SCHMIDT:** You know, Your Honor, I think the
10 documents are still trickling in.

11 The background to this is we met and conferred on the
12 document production early last week. And, given the tight
13 timetable that Judge Alsup had set forth, the Special Master
14 ordered that all documents be produced by last Friday, which
15 was December 8th.

16 I won't bore you with all of the details, but that did not
17 happen. Documents trickled in throughout the weekend and early
18 this week. And we're finding it incredibly difficult to plan
19 discovery and prepare for depositions, which are in progress
20 right now -- they started yesterday -- as the universe of
21 documents keeps shifting under our feet.

22 And what we're asking for in Number 2 is simply if we're
23 going to accomplish the timetable that Judge Alsup set forth,
24 that we have to have a date certain on the document production.
25 We're asking you to order Uber to complete their document

1 production; certify that it is complete, consistent with our
2 meet-and-confers, by December 14th. That's tomorrow. That's
3 already six days later than Special Master originally ordered.

4 **THE COURT:** All right. Mr. González, so there are
5 still documents to be produced?

6 Or whoever's speaking for Uber.

7 **MS. RIVERA:** Your Honor, this is Sylvia Rivera. I
8 can speak to that.

9 **THE COURT:** Okay. Are there still documents to be
10 produced?

11 **MS. RIVERA:** Your Honor, we are working our way
12 through what we believe are the final set. And these are
13 communications from in-house counsel.

14 So we produced 3,200 documents. About 2,200 of those were
15 produced by last Friday, which was the soonest date after we
16 received the RFP. We've been rolling out the remainder just as
17 soon as they're ready to be on a daily basis.

18 What we have left, and what I expect will be produced
19 tomorrow, is working our way through the final set of
20 in-house-counsel communications. It just takes longer to
21 review because instead of the privilege issue --

22 **THE COURT:** The privilege. Okay. So produce them by
23 tomorrow. And then that will complete your production. Is
24 that the representation?

25 **MS. RIVERA:** Our plan is to produce those tomorrow.

1 I'm looking at my notes here, and I'm thinking that there's
2 probably one other category.

3 There was an RFP that we met and conferred about, and
4 agreed to expand the scope of our production. So we're working
5 through those documents today. So those probably would also be
6 produced tomorrow, as well.

7 **THE COURT:** Okay. So produce the rest of the
8 production by tomorrow. Okay.

9 **MS. RIVERA:** Thank you, Your Honor.

10 **THE COURT:** All right. I'm not sure what Number 3
11 is, and how it's different from Number 1.

12 **MR. SCHMIDT:** Sure, Your Honor. This is
13 Patrick Schmidt, from Waymo, again.

14 So Number 1 was, as Ms. Baily articulated, a log of
15 communications from Morrison & Foerster involving the Jacobs
16 allegations.

17 Number 3 is more of the conventional privilege log
18 associated with the documents that they're going to complete
19 their production of tomorrow.

20 Again, when we met and conferred with the Special Master
21 early last week, we set forth a timetable that should govern
22 the discovery period. The Special Master ordered that the
23 privilege log -- the complete and fulsome privilege log --
24 accompanying their document production should be produced
25 today. That was the agreement.

1 Now, in our meet-and-confer sessions over the weekend and
2 early this week, Uber's attorneys had suggested to us that a
3 complete privilege log will not be forthcoming because the
4 communications are too voluminous, and it would be too
5 burdensome.

6 And what we're trying to do here is get out in front of
7 the issue, because, you know, Judge Alsup's speedy rule simply
8 does not allow for an exception to privilege log requirement
9 based on volume or burden. I mean, that was made abundantly
10 clear during --

11 **THE COURT:** Okay. I'm going to stop you,
12 Mr. Schmidt, because I have discovery now. So I'm just going
13 to stop you, because --

14 All right. So let me hear from whoever's going to
15 speak -- is it Ms. Rivera? -- about the privilege log.

16 **MS. RIVERA:** Thank you, Your Honor. This is
17 Ms. Rivera.

18 So I was surprised to see this issue in the letter
19 briefing from Waymo. And -- and we did not address it in our
20 brief, because we frankly didn't think that there was any
21 dispute of this issue.

22 This past Monday we met and conferred -- the parties,
23 along with the Special Master. And we reported on the volume
24 of Privileged Documents that we were working with. It was in
25 excess of 2,000 documents. It is now probably more like 4,000

1 documents.

2 And the agreement that we reached on Monday was that we
3 were to do the type of categorical logging, just in light of
4 the volume of documents and the extraordinarily short period of
5 time that we have to prepare the log; and that we would do it
6 by today. That's the agreement we reached on Monday.

7 **THE COURT:** You -- I'm sorry. You would do it by
8 when?

9 **MS. RIVERA:** Today.

10 **THE COURT:** Oh, by today. All right. So you're
11 going to do it by today. Okay.

12 **MS. RIVERA:** I have a team very, very busy. They
13 worked late into the night, and they're keeping busy with it
14 all day long.

15 **THE COURT:** Okay. Great.

16 **MS. RIVERA:** That we agreed to this Monday.

17 **THE COURT:** All right.

18 **MR. SCHMIDT:** Well, Your Honor, I have to respond to
19 that, because on Monday when we discussed the privilege log, we
20 indicated that we wanted a complete conventional privilege log.

21 **THE COURT:** Okay. You know, you may --

22 Why? Why?

23 So this is an issue as to -- so that you can show the
24 Special Master. Right?

25 What is this all relevant to? What claim or defense in

1 this lawsuit is this log relevant to?

2 **MR. SCHMIDT:** Well, Your Honor, first of all, the
3 privilege log is required just to maintain the privilege for --

4 **THE COURT:** No. Mr. Schmidt. Mr. Schmidt.

5 **MR. SCHMIDT:** -- but in addition --

6 **THE COURT:** Answer my question. Yep. What's it
7 relevant to?

8 **MR. SCHMIDT:** The substantive relevance of the
9 privilege log is that it indicates who at Uber knew what when
10 regarding the Jacobs letter. Both the allegations underlying
11 the Jacobs letter -- i.e., competitive intelligent ephemeral
12 communications not attributable devices. That's the trade
13 secrets.

14 It also -- the log would also indicate who at outside
15 counsel had notice of the Jacobs letter, and why it was
16 withheld, which would be evidence of a cover-up.

17 So we think that the -- that the privilege log is not only
18 required under the standing orders, but it has substantive
19 relevance to the case.

20 The other thing I would point out is one of the
21 allegations in the Jacobs letter is the use of improper
22 attorney-client-privilege assertion, in order to shield
23 relevant evidence from discovery.

24 **THE COURT:** Okay. I'm going to stop you,
25 Mr. Schmidt.

1 I'm going to -- Mr. Schmidt -- ah, Mr. Schmidt, I'm
2 talking. So when we do it by phone -- and I do it as an
3 accommodation to the lawyers -- you just have to. Normally,
4 you'd be here, and you could see my face. And we can't do
5 that. So when you hear my voice, I just need everybody to
6 stop. Okay?

7 So let me ask Ms. Rivera. When you say it's a categorical
8 logging, what does that mean? What information are you giving?

9 **MS. RIVERA:** Sure. So what we discussed this past
10 Monday is that we would provide a list of all in-house
11 attorneys who received communications as being withheld on
12 privilege grounds; the earliest date of that communication; the
13 volume of communications; and, to the extent there were
14 communications indicating Jacobs issues that confirmed that
15 relate to or mention Waymo or Chauffeur, we would identify any
16 attorneys who received that communication.

17 **THE COURT:** Okay.

18 **MR. SCHMIDT:** Your Honor, may I respond?

19 **THE COURT:** You may.

20 **MR. SCHMIDT:** The categorical privilege log that
21 she's discussing -- there was never any agreement on that.

22 The way this unfolded is that the Special Master asked us
23 to tell Uber what we would accept as an interim measure.
24 Frankly, we were loath to even provide something less than a
25 full privilege log, because we anticipated that exactly what's

1 happening here would happen: We -- we would set out some sort
2 of interim measure that we with would accept along the way to a
3 full privilege log, and that Uber would take that, and couch it
4 as some sort of agreement that we agreed to less.

5 We have been adamant, both on Monday -- the Special Master
6 could corroborate this -- and before, that we require a
7 complete and comprehensive privilege log, especially in light
8 of the relevance of the issues to this case.

9 **THE COURT:** Well, I'm not quite sure that it's so
10 relevant to the issues in this case, to be honest. We're all
11 talking about a collateral issue to begin with, number one.
12 Okay?

13 But I understand that there is some discovery that has to
14 be done.

15 But what you were demanding is that they give you a full
16 privilege log now.

17 So I don't think you can have it both ways, because there
18 would be 4,000 documents. And you want -- then you're going to
19 have to take some time. So you can't have it both ways.
20 That's unreasonable, and not proportional to the needs of the
21 case.

22 So you'll get today your categorical privilege log.

23 If you can make some showing which is in here as to why
24 you need more that's proportional to the needs of the case that
25 goes to a claim or defense at issue in this case --

1 What I understood, all this was as to the issue that the
2 Special Master is addressing as to whether the letter should
3 have been turned over.

4 **MR. PERLSON:** This is David Perlson.

5 That's actually not correct.

6 On -- at the hearing -- and then later, as clarified in
7 the Case Management Order -- this is Docket 2315 -- the
8 Court -- Judge Alsup said -- he said that Waymo is granted
9 supplemental discovery to get to the bottom of new evidence
10 that has come to light as the result of the letter dated
11 November 22nd. That's the Jacobs letter. That disputes
12 regarding this should be brought to you.

13 And then it goes on and it says explicitly: Supplemental
14 discovery may extend to any new subject matter previously
15 unknown to Waymo's counsel that has arisen as a result of the
16 Richard Jacobs letter, e-mail, or Settlement Agreement that
17 were the subject of this week's evidentiary hearing.

18 And then it lists about six different or eight different
19 categories of things that were at issue in the letter, such as
20 the use of nonattributable devices, ephemeral communications.
21 Another one is defendant's internal investigation regarding the
22 aforementioned practices. Another one is defendant's
23 systematic attempts to avoid creating a paper trail, and to
24 conceal facts under contrived claims of attorney-client
25 privilege and other privileges.

1 The other one is defendant's discovery practices and
2 procedures bearing on their failure to produce the Jacobs
3 letter or e-mail, or disclose earlier in the litigation.

4 And, you know, and there's -- there's -- there's more.
5 And what -- and then it goes on. It says supplemental
6 discovery may also extend to further inquiries specific to
7 relevant issues raised by the Jacobs e-mail or letter, even if
8 such inquiries also touch on subject matter previously known to
9 Waymo's counsel. And then it says that we can have depositions
10 and discovery in relation to this.

11 And what I think is important and what's contemplated was
12 not simply issues relating to the Special Master and his
13 charge; and, in fact, that's clear, because the Court ordered
14 the Special Master to provide his decision.

15 **THE COURT:** Mr. Perlson, I'm going to interrupt.

16 I'm -- I'm going to interrupt you here, and --

17 I understand that. I didn't say discovery.

18 But this privilege log that you're talking about -- I'm
19 going to say: What's that relevant to?

20 If you want to narrow it and say --

21 Wait. No. Wait. Mr. Perlson.

22 **MR. PERLSON:** -- especially in light of the fact --

23 **THE COURT:** Mr. Perlson, stop. I'm sorry.

24 Mr. Perlson, I'm not going to be able to allow you to -- you
25 need to follow the same rule as Mr. Schmidt. A different rule

1 does not apply to you.

2 Now, what I -- what -- I'm going to have him do this
3 Category 1 that you're getting today.

4 If there's a particular narrow area that you believe, for
5 example, every single one of these -- you don't need a full
6 privilege log. You can do it by a particular subject within it
7 that you may need a full privilege log, then you can meet and
8 confer about that with the thing.

9 But I'm not going to order them to -- it's impossible, in
10 any event, to do a full privilege log on those 4,000 documents.
11 It's impossible. And it's not proportionate. It's
12 unnecessary.

13 There may be particular things that you may need it
14 before -- but going through that list you did -- like, take one
15 of those categories. Any communications that have to do with,
16 X, maybe. Something like that.

17 But I'm not persuaded that, sitting here right now, they
18 should do a full privilege log by tomorrow or by the day after
19 tomorrow, which is what you asked for in the letter, and which
20 is not reasonable, on all 4,000. So come back with something
21 more reasonable, or try to agree to something more reasonable,
22 because that's not reasonable.

23 Okay. All right. Now, as to Number 4, which also wasn't
24 addressed by Uber's letter -- or maybe it was addressed by
25 Uber's letter.

1 **MR. PERLSON:** That one was, Your Honor.

2 **THE COURT:** So tell me: What's the status of this?

3 **MS. ROBERTS:** Your Honor, this is Andrea Roberts,
4 from Waymo. I don't know which side you want to hear from
5 first on this, but this particular issue arose as a prospect of
6 Uber's efforts to meet and confer about compliance and
7 production of documents responsive to our document requests.

8 As background information for you, Your Honor -- and this
9 is in our letter -- Uber established a Special Matters
10 Committee on their Board of Directors that oversaw both this
11 litigation, and the allegations of Richard Jacobs.

12 And so we -- on November 30th. Presumably some of them
13 specifically asked for documents that would come from that
14 Special Matters Committee or members of the Special Matters
15 Committee, and presumably documents in response to other
16 requests also would.

17 We had meet-and-confers starting on December 1st regarding
18 all of the document requests; not the ones specifically where
19 documents that reside with the Special Matters Committee --

20 **THE COURT:** Okay. Ms. Roberts, I'm just going to
21 stop you for a minute, because now I see.

22 So Uber responded that they believe the issue was moot,
23 because they have agreed to produce it.

24 So just tell me in one sentence, then, what the issue is.

25 **MS. ROBERTS:** Okay. So the issue is they've stated

1 that they don't think that they're obligated to search for
2 documents present within the Special Matters Committee. And so
3 that is what raised concerns with us that they're not doing a
4 complete and thorough --

5 **THE COURT:** Okay, but tell me. You read their letter
6 that they filed last night.

7 **MS. ROBERTS:** Right.

8 **THE COURT:** So given that letter, what is the issue?

9 **MS. ROBERTS:** Ah, the issue is that they've put
10 together a search. They're only planning on searching through
11 the e-mails of the Special Matters counsel -- the Special
12 Matters Committee counsel.

13 We've negotiated search terms, and we can continue going
14 back and forth on that; but they have not confirmed whether
15 there are other documents that would be potentially responsive
16 to our request, beyond those of the Special Matters Committee
17 counsel.

18 And, again, I think the -- our concerns really were raised
19 by their representation that they don't think they need to be
20 doing this, anyway, and they're, you know, sort of doing this
21 to us as a favor.

22 So we just want an Order from the Court to confirm that
23 they should be searching for documents that reside with the
24 Special Matters Committee in response to our document request
25 to Uber.

1 **THE COURT:** All right. Let me hear from Uber about
2 what they're producing.

3 **MR. SCHMIDT:** Good afternoon, Your Honor.
4 Shawn Rabin, for Uber.

5 So we reached out to Waymo last week, because there's -- a
6 Special Matters Committee has a peculiar issue, in that the
7 Special Matters Committee had their own privileges that are
8 independent of Uber's. And what that means is Uber, as a
9 company, does not have the ability to search the Special
10 Matters Committee documents, because otherwise it could
11 possibly invade that privilege.

12 This presented a tricky situation, because Waymo marked
13 their document requests, "Attorneys' Eyes Only." So we --

14 **THE COURT:** I know --

15 **MR. RABIN:** So we couldn't share.

16 **THE COURT:** Mr. Rabin, I read that.

17 Just tell me. Just tell me. What have you searched, and
18 what are you producing?

19 Because your letter says the issue is moot. Tell me why
20 it's moot.

21 **MR. RABIN:** Understood.

22 **THE COURT:** What are you producing?

23 **MR. RABIN:** So we had the Special Matters Committee
24 counsel, who is the law firm of Cooley, run targeted searches,
25 which we shared with Waymo, across their e-mail system.

1 Cooley had replaced as the Special Matters Committee
2 counsel -- which is the group that coordinates the information
3 among the Special Matters members -- the law firm of
4 Shearman & Sterling. So we also had Shearman & Sterling run
5 searches across their e-mails. Those searches, I am told, are
6 in the process of being completed tonight. And they're going
7 to send those to the vendor. So we should be able to produce
8 them tomorrow.

9 In addition, on Tuesday, there were document requests
10 served on three Special Matters Committee members. All three
11 of those Special Matters -- the lawyers for those committee
12 members are asserting in their documents, as we speak, I
13 believe the one individual whose deposition is supposed to be
14 this Friday should have those documents ready for production
15 tomorrow morning, as well. The other two should follow shortly
16 thereafter.

17 **THE COURT:** All right. Ms. Roberts, what more is
18 there?

19 **MS. ROBERTS:** So, Your Honor, I'm not sure that I
20 know. I think -- I think we just want an assurance that
21 there's not some category or repository of documents that's
22 falling through the cracks here, based on the assertion that
23 Uber doesn't need to be looking through these documents. I
24 think it really boils down to that.

25 **THE COURT:** Well, Mr. Rabin, you heard the question.

1 What's the response?

2 **MR. RABIN:** We asked the -- the response is: I don't
3 think there is. We asked the Special Matters Committee
4 counsel: Where -- where are the documents most likely to
5 reside, if you run a search on them again?

6 And their response was: E-mails.

7 I'm not in a position, because I don't control the
8 documents, to give you a 100 percent assurance that that's all
9 the documents in the world; but it is the place most likely for
10 relevant documents to reside, almost all of which are going to
11 be privileged. There are going to be some communications to
12 third parties; but because it's a lawyer-driven process, most
13 of these documents are going to be privileged, and they'll also
14 be produced in logs.

15 **THE COURT:** Okay. Okay.

16 **MS. ROBERTS:** So, Your Honor, I mean, I think -- I
17 appreciate the effort to get to the bottom of this, but we
18 still have that language from Uber's counsel saying, you know,
19 they can't say for sure, because they don't control the
20 documents.

21 And there hasn't really -- there hasn't been any sort of
22 showing -- any evidence, declarations, case authority --
23 establishing that Uber doesn't control the documents or have
24 possession, custody, or control over these documents that
25 reside with a committee of its Board of Directors. And so,

1 again, seems like there's this possibility that there are
2 documents not being located, because Uber is not approaching
3 this as though it's part of their obligation to search and
4 respond to our request to Uber.

5 **THE COURT:** Well, where else do you think there would
6 be documents? E-mail seems to me the most likely -- most
7 yield. I don't know what else there would be.

8 **MS. ROBERTS:** There are non-e-mail documents that
9 resided with the committee, and we haven't had them respond to
10 that.

11 **THE COURT:** Mr. Rabin.

12 **MR. RABIN:** Your Honor, may I respond?

13 **THE COURT:** Yeah.

14 **MR. RABIN:** So that's not -- that's not accurate.

15 As I explained, I am positive that both Cooley and
16 Shearman, like any other law firm in the country, has some type
17 of document-management system where they save, for example,
18 lawyer drafts of documents, and things of that sort. They are
19 even more, by their definition, privileged than any other type
20 of e-mail exchange that I guess arguably one could cite are
21 circumstances where they would not be privileged.

22 What we are trying to do is literally produce many, many
23 documents that, in most cases, would take months; and do it in
24 a matter of days. And so we are trying to find the place where
25 it is most likely that the relevant documents are going to

1 reside, searching quickly, and produce them.

2 I don't think it's fair to try and set us up to say, *Well,*
3 *you didn't literally look under every stone in the 48 hours you*
4 *have, and so therefore you're somehow not doing it properly.*

5 So all I can represent is we are looking at the places
6 where the most -- that are most likely to have responsive
7 documents, as has been communicated to us. Those are being
8 searched, and they will be produced.

9 **THE COURT:** Okay. There we are. Okay. I don't
10 think there's anything for me to order there. I think you get
11 them.

12 And if there's something that you think should be there
13 that isn't, then we can bring it up at that time. But it's
14 just, given the amount of time we have, we have to go for
15 yield. What search is going to most likely come up with
16 something that may have some relevance to the case? Okay.

17 **MS. ROBERTS:** Thank you, Your Honor.

18 **THE COURT:** All right. Now, Uber raised a number of
19 issues, but I'll hear from Mr. Cooper. I didn't know if those
20 matters were teed up for me, because Waymo didn't address them
21 in their submission.

22 **SPECIAL MASTER COOPER:** Well, I think that the next
23 issue that is most important; is the 30(b)(6) depositions and
24 topics. And I think that is not resolved.

25 **THE COURT:** Okay. You mean Uber's 30(b)(6)?

1 **SPECIAL MASTER COOPER:** Yes. Is that -- is that your
2 view, Arturo?

3 **MR. GONZÁLEZ:** Yes. Yes, it is, John; and that the
4 e-mail that I sent --

5 **THE COURT:** Wait. So this is the issue that Uber
6 wants to take a 30(b)(6) of Waymo regarding their
7 off-the-record and other ephemeral-messaging system policy and
8 the like. Is that it?

9 **MR. GONZÁLEZ:** No. To be more specific, Your Honor,
10 they are producing a 30(b)(6) on that topic tomorrow.

11 The 30(b)(6) that we have a dispute on deals with
12 surveillance.

13 **THE COURT:** Oh. Surveillance videos?

14 **MR. GONZÁLEZ:** Yes. In part, yes.

15 **THE COURT:** Okay.

16 **MR. GONZÁLEZ:** And the 30-second version is: If they
17 served us with a 30(b)(6) to produce the witness of
18 surveillance that we're going to, there was extensive --

19 **THE COURT:** But wait. Can I just stop you,
20 Mr. González?

21 I'm reading that -- your letter. And you -- it referred
22 to Topic Number 8 -- right? -- of their 30(b)(6)?

23 **MR. GONZÁLEZ:** Ah, actually, that should probably be
24 Topic Number 9.

25 **THE COURT:** Well, whatever. It's surveillance.

1 Well, it says "8." It says, "Surveillance conducted by or at
2 the direction of defendants of any persons who are witnesses or
3 attorneys in this case."

4 **MR. GONZÁLEZ:** Oh, I'm sorry. Your Honor, that is
5 what they served on me.

6 **THE COURT:** Yes. And in response to that, you want
7 them to do a 30(b)(6). You want to do a 30(b)(6) that's not on
8 that topic, but a different topic, which is --

9 **MR. GONZÁLEZ:** Well, it's --

10 **THE COURT:** It's a different topic.

11 **MR. GONZÁLEZ:** Your Honor, it's on surveillance.

12 It's simply broader. And the reason that it's broader is
13 because two days of testimony and deposition testimony already
14 in the last couple days -- they're asking all of our witnesses
15 about surveillance.

16 And it just -- it's -- very quickly --

17 *Are you aware of any surveillance that was done on any*
18 *Waymo vehicle?*

19 *Are you aware of whether or not Uber conducted*
20 *surveillance of Waymo?*

21 So they've gotten a lot of testimony from my people that
22 we did surveillance.

23 **THE COURT:** Okay. All right. Okay. So let me -- I
24 don't have it, because Waymo wasn't presented, so I'm not going
25 to give a final ruling. I'm going to give you what my reaction

1 to it is, which is this. And this is -- and I'm going by -- to
2 the extent Waymo wants to argue at trial or before a judge or
3 at trial that Uber did surveillance of Waymo's cars, then Uber
4 is going to be entitled to discovery of whether Waymo did the
5 same of Uber or any competitors. That goes right to what he
6 said with respect to the ephemeral messaging.

7 But if Waymo says, *No, we're not* -- they may have asked it
8 in the depositions, but maybe they have no intention of using that at
9 trial -- then we just should stop now, and quit going down
10 these rabbit holes, but --

11 **MR. GONZÁLEZ:** Your Honor, I completely agree with
12 that.

13 **THE COURT:** But anyway, that's not a final ruling,
14 because I don't -- Waymo hasn't had the opportunity to put
15 anything in front of me.

16 I'm just telling you what my approach is and my reaction
17 is based on that.

18 And then just a matter of --

19 So there.

20 So that's -- hopefully you guys can work it out then.

21 **MR. GONZÁLEZ:** We'll work it out, Your Honor.

22 **MR. BAKER:** Your Honor, this is Jim Baker, from
23 Quinn Emanuel.

24 If I could just comment on that --

25 **THE COURT:** Sure.

1 **MR. BAKER:** -- very briefly. I think the difference
2 is the depositions where we've been asking their witnesses
3 about surveillance are not 30(b)(6) depositions. We originally
4 included this 30(b)(6) topic in our Notice, because Judge Alsup
5 had referenced it in -- at the hearing or in one of his Orders.

6 If you -- you may recall -- I -- the reason I think he did
7 that is because in the case of the letter, there are
8 discussions about a prior case where Uber was investigating
9 counsel and the party on the other side.

10 And so we included a topic. It went directly to that.
11 It's just Judge Alsup had referenced.

12 We then told Uber that we would withdraw that topic if
13 they would agree to not include any surveillance topics in
14 their 30(b)(6) notice.

15 They said "No," and then served us with a much broader
16 topic. They chose key surveillance of all competitors.

17 And so that's the issue here, is --

18 **THE COURT:** I see.

19 **MR. BAKER:** -- not the 30(b)(6) topics. Not -- not
20 individual depositions.

21 **THE COURT:** Well, I don't know that it matters if
22 it's individual or 30(b)(6).

23 I think what matters is what Waymo intends to use. Right?

24 And if you don't intend to use it, then it should just
25 stop. And then Uber doesn't need the discovery, either.

1 And if you --

2 So that's it; whether it be 30(b)(6), or through
3 individual questioning, but if --

4 So I don't think it matters if it's 30(b)(6) or
5 individual.

6 If you're taking and you intend to use testimony that you
7 got at an individual's as to surveillance that they did of
8 Waymo's cars, I assume it's public surveillance, like
9 they're --

10 Right?

11 I mean, if it's --

12 I suppose it's different if they were sneaking into your
13 warehouse or something; but I don't probably think that's what
14 you're referring to.

15 **MR. BAKER:** No. No, no, no.

16 **THE COURT:** These are cars that are driving down the
17 street. Okay? I mean, everybody -- I see them sometimes. I
18 may take a picture -- right? -- because it's a novelty. I
19 don't think there's anything --

20 But to the extent Waymo's going to use that fact, then
21 Uber's entitled to try to develop that Waymo does the same.
22 But it should be narrow. And, quite honestly, maybe you guys
23 can just agree not to do it, because it is a big, "So what?"

24 If it's just cars that are going, driving down the street,
25 it really has very little value in this case, which -- you're

1 not going to have very much time to try it. And, you know,
2 you're going to have to make hard decisions about what to put
3 in. So maybe this would be a good place to start knocking
4 something out.

5 Anyway, again, that's not a ruling. That's just an
6 instinctual response to see if maybe that will help going
7 forward.

8 **MR. BAKER:** Understood, Your Honor.

9 We'll -- we'll consider that, and we'll see what we can
10 do.

11 **THE COURT:** Okay.

12 **MR. BAKER:** Thank you.

13 **THE COURT:** All right.

14 **MR. GONZÁLEZ:** Your Honor, Your Honor, the only other
15 issue I want to raise on this call is one document request.
16 Again, just 30 seconds. Again, they made a change in policy
17 and keep out a name that's very significant.

18 Before that, they saved everything that was a chat; just
19 like e-mails.

20 After that, they don't save anything, and let each
21 individual affirmatively decide to save a chat.

22 And the question that we asked was -- which this one
23 document shows -- you know, *Whose idea was it to make this*
24 *change? And why was it made?*

25 And we think that Judge Alsup is going to be extremely

1 interested in this issue. And we're told that they --

2 **THE COURT:** Well, isn't that a question that you'll
3 have for the 30(b)(6) witness tomorrow?

4 **MR. GONZÁLEZ:** I am going to ask that, Your Honor;
5 but I just anticipated that the witness is either not -- is not
6 going to know. And what I wanted were the documents that they
7 showed the witness.

8 And, Your Honor, I mean, look. Here's what's going on.
9 If their clients raised this issue in other lawsuits, and they
10 basically say in other lawsuits -- well, they make it sound
11 like a privacy issue. You know, these are just like phone
12 calls. And you don't normally record phone calls without
13 telling your employees.

14 That's not why they did it.

15 There must be documentation. And this is a huge change.
16 There has to be documentation where somebody comes up with the
17 idea proposed in this.

18 **THE COURT:** Okay.

19 **MR. GONZÁLEZ:** They don't give me that documentation.

20 **THE COURT:** Okay.

21 **MR. GONZÁLEZ:** And so I said, *Well, who was the*
22 *person? And why was it done?*

23 I mean, there's got to be documents that show that.

24 **THE COURT:** Does anyone from --

25 **MR. GONZÁLEZ:** Want to know.

1 **THE COURT:** Does anyone from Waymo want to respond?

2 **MR. BAKER:** Sure, Your Honor. This is Jim Baker.

3 The reason that Mr. González knows about the two prior
4 cases is because we've produced declarations from those two
5 prior cases that discuss this issue. So we have produced
6 documents.

7 And those -- I'd note that in both of those two prior
8 cases, the Court noted that the litigation holds in those cases
9 directed the people involved in those cases to go on the
10 record; and therefore, there was no problem. And the motions
11 in those cases were denied.

12 Now, I will also say that we -- in addition to those
13 declarations we produced, Mr. González says, *Well, there must*
14 *have been documents about the analysis.* And he is right. And
15 we produced that document yesterday. So I don't know why he's
16 saying now that he didn't get documents.

17 We produced the document yesterday, pursuant to Your
18 Honor's Rule 502 Order, which we appreciate. And so he now has
19 the document, and now thinks the change in policy and
20 explaining why it was made --

21 **MR. GONZÁLEZ:** So, Your Honor, this is precluded. I
22 have a document that announces the change in policy.

23 This does not -- this does not explain why this change was
24 made, or who -- or who proposed it. And that's what's missing
25 still. And neither do the declarations. The declarations are

1 these self-serving declarations.

2 **THE COURT:** No, no, no. The declarations aren't
3 sufficient, at all.

4 And this is the thing. You go forward with your
5 deposition, but the witness better be prepared to answer
6 everything.

7 And, for example, if a witness is asked, *Have there ever*
8 *been any discussions at Waymo as to -- regarding this*
9 *messaging, and as it relates to litigation*, and the witness
10 says, *I don't know*, the witness is going to have to come back.
11 I mean, this is what Judge Alsup said.

12 You're trying to blame them for ephemeral; and they're
13 going to show you that you do it just as badly as they do it.
14 So if you want, if that's going --

15 If you want that to be an issue in the trial, then you
16 have to open up your discovery to Uber. That's just a
17 matter --

18 **MR. BAKER:** Your Honor -- and I guess what I'm -- the
19 point that I'm making is that we have -- we've produced the
20 document yesterday. And what Mr. González is telling you, when
21 he says that it doesn't say why we made the change, is wrong.
22 It does. The e-mail says why the change was made. And it's an
23 e-mail that was sent by two gentlemen, one of which is a
24 General Counsel in the company.

25 **THE COURT:** All right. That's fine. This isn't

1 formally in front of me, but just make sure, if the
2 representation is that nothing is being withheld, that we've
3 done this part, and nothing is -- right? So that's all.

4 The same thing that Waymo was concerned about, about the
5 search being fulsome, and the like -- it needs to go on this
6 particular issue. And I don't think necessarily everything in
7 this particular discovery stage is equal, at all; but on this
8 particular, it is equal. Okay?

9 **MR. BAKER:** Understood, Your Honor.

10 As a five --

11 We actually have one additional issue that I would like
12 raised, if you have just a couple more minutes.

13 **THE COURT:** Sure.

14 **MR. BAKER:** Is so I referenced Your Honor's Rule 502
15 Order. And that was -- we had requested you do that.

16 We have an agreement between the parties that the parties
17 would exchange information about the default settings for these
18 ephemeral applications; and then, number two, whether and how
19 their litigation holds address those applications.

20 The parties in there entered that agreement.

21 And then Your Honor entered a Rule 502 Order certifying
22 that any exchange of that information would not be a waiver of
23 privilege.

24 We're prepared to exchange that information. I told
25 Mr. González that we were prepared to do that.

1 He is now going back and saying, *Well, we'll get you the*
2 *lit.-hold information, but we're not going to give any.*

3 And he's already said, *I don't think there is any from --*
4 *from the Uber side, but he said, I'm not going to give you,*
5 *because we were required to provide a report.*

6 And so now all I'm asking is that he give us the same
7 information. And that was part of the stipulation.

8 So I don't know why he is -- he's just trying to back out
9 of it now.

10 **THE COURT:** Mr. González.

11 **MR. GONZÁLEZ:** A response. A simple response.

12 There is -- there's a service that they use companywide
13 that I'm going to give information for.

14 And if they want to know what service we use, you know
15 that's companywide or company approved -- not a problem.

16 But that's not what he asked for today. Today he wants
17 default settings for any chat application used by any employee
18 in our 15,000-employee company. And that's too broad. And
19 that wasn't the deal.

20 I have an app stamp ready chat thing that some employee --
21 some rogue employee may use.

22 It's the company chat. What's the default?

23 So we, too, have a company thing that we used. I think it
24 was called "Wickr," but I -- don't hold me to that. And I'm
25 willing to give him the default for that.

1 But the e-mail that he wrote to me today said, "any chat
2 application used by employees." Any employees. And that's
3 different. That's not what we had agreed to.

4 So it's got to be an apples for apples.

5 **THE COURT:** Okay.

6 **MR. BAKER:** And --

7 **THE COURT:** Sounds like there's agreement, then.

8 **MR. BAKER:** That's exactly what we want.

9 **THE COURT:** Sound like there's agreement. Yay.

10 **MR. BAKER:** No, I don't think there is, Your Honor,
11 because it --

12 So our employees only use one chat application for
13 business purposes. And that's -- that application is called
14 "Hangouts." And the default setting is -- is off the record.
15 And that's information that Mr. González already has.

16 We want to know the chat application that his employees
17 use for business purposes, and what the default setting is.
18 And he hasn't given it to us.

19 And if it is the case that Uber uses more than one chat
20 application for business purposes, then so be it. The fact
21 that Google only uses one doesn't mean that they shouldn't have
22 to tell us all of the applications they use, and what those
23 default settings are.

24 **THE COURT:** Mr. González, you're not saying that you
25 don't have --

1 You're saying is it -- if I understood what you were
2 saying, it's that you're not going to go out and --

3 Whatever Uber blesses and said, *These are the applications*
4 *that you use* -- however many they are -- you're going to tell
5 them what they are, and what their default applications are.
6 Correct?

7 **MR. GONZÁLEZ:** That's correct. That's correct,
8 Your Honor.

9 A company approved that there's two. If there's three,
10 there's three.

11 I just wanted to be clear that I'm not going to canvass
12 15,000 people, just like I'm quite certain they haven't
13 canvassed 20,000 people.

14 **MR. BAKER:** That's fine, Your Honor.

15 As long as -- as long as we have all of the, let's say,
16 company-approved chat applications, and what those default
17 settings are, that's all we're asking for.

18 **THE COURT:** Okay. Then there is, in fact, agreement.
19 Okay. Anything else I can try to --

20 **MR. GONZÁLEZ:** You should never ask that question
21 with this group.

22 **THE COURT:** I know, but I'm trying to see if I can
23 give you some guidance and head something off, if need be; help
24 Mr. Cooper.

25 Nope? Okay.

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